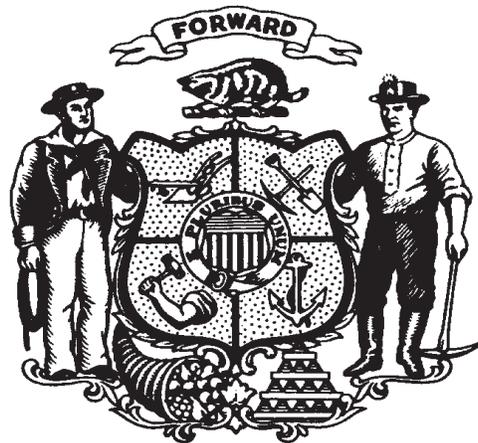


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Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade and Consumer Protection (2)

1. Rules adopted creating **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

Publication Date: June 12, 2003
Effective Date: June 12, 2003
Expiration Date: November 9, 2003
Hearing Date: July 15, 2003

2. Rules adopted revising **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any rodent from Africa.

Finding of emergency

1. As a result of the outbreak of an orthopox virus later identified as monkey pox in Wisconsin, the department adopted an emergency rule in early June, 2003.

2. Since the June, 2003 emergency rule was adopted, there has been additional information learned about the origins of the infected animals and the actual form of orthopox virus responsible for the symptoms. As a result of this new information, the department has been able to refine its identification of animals that should be subject to the prohibitions previously imposed.

3. After the department adopted the emergency rule (albeit before the rule was published) the CDC and FDA adopted their joint order that indicates the animals of concern are prairie dogs and African rodents.

4. The CDC and FDA joint order confirms the threat to humans from exposure to prairie dogs and African rodents.

5. This amended emergency rule provides consistency between the CDC and FDA joint order and Wisconsin's emergency rule.

6. The Wisconsin Department of Agriculture, Trade and Consumer Protection seeks to provide the greatest protection for Wisconsin citizens while creating the least acceptable disruption to their lives and businesses. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an amended emergency rule to protect the health, safety and welfare of the public.

Publication Date: July 24, 2003
Effective Date: July 24, 2003
Expiration Date: November 9, 2003
Hearing Date: September 3, 2003

Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the

National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform to the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003
Hearing Date: October 16, 2003

Employment Relations Commission

Rules adopted amending ss. **ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by

increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

Publication Date: August 25, 2003
Effective Date: September 15, 2003
Expiration Date: January 22, 2004
Hearing Date: November 20, 2003
[See Notice this Register]

Financial Institutions – Securities

Rules adopted revising **ch. DFI–Sec 4**, relating to conforming Wisconsin's Securities Law rules concerning broker–dealer books and records to federally–mandated standards under the Securities Exchange Act.

Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record–keeping requirements for securities broker–dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission ("SEC").

Following passage of NSMIA, the SEC commenced a rule–making process that spanned a several–year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker–dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker–dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker–dealer books and records rules to

conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI-Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a-3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a-3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a-4. New subsections (3) and (4) replace the current Wisconsin rules in DFI-Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of "branch office" under current rule DFI-Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a-3, and must be held for the retention periods specified in new federal Rule 17a-4.

(2) Section 2 repeals current Wisconsin rule DFI-Sec 4.03 (6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI-Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker-dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI-Sec 4.03 (7) to reflect the repeal of DFI-Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI-Sec 4.05 (5) [requiring broker-dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross-reference to the new federal provision on that subject in SEC rule 17a-3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

Publication Date: May 7, 2003
Effective Date: May 7, 2003
Expiration Date: October 4, 2003
Hearing Date: August 11, 2003
Extension Through: November 30, 2003

Health and Family Services (Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR).

Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003
Hearing Date: October 15, 2003

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child-bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Health and Family Services (2) (Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk-sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co-equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-nine percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this order amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of

the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

The department's authority to amend these rules is found in s. 149.143 (2) (a) 2., 3., 4., and (3), Stats., and s. 227.11 (2) Stats. The rule interprets ss. 149.142, 149.143, 149.146, and 149.165, Stats.

Publication Date: June 24, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003
Hearing Date: July 15, 2003

- Rules were adopted revising **ch. HFS 144**, relating to immunization of students.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department has a rulemaking order (CR03-033) containing a variety of relatively minor changes to over a dozen chapters of administrative rules administered by the Department. The Department had anticipated that CR03-033 would be in effect on or before September 1, 2003. One of the proposed changes in CR03-033 is a provision that changes school immunization standards. Clearinghouse Rule 03-033 has been delayed for reasons unrelated to the provisions in this order. Consequently, the identical provisions in CR03-033 will not be in effect on September 1, 2003. For reasons stated subsequently in this analysis, unless these changes to the minimum immunization requirements in chapter HFS 144, Immunization of Students, are in effect September 1, 2003, needless confusion and unintended effects will result.

In 2002, the Department's Wisconsin Immunization Program requested minor language changes to chapter HFS 144 as part of a planned "omnibus" rulemaking order containing a variety of proposed relatively minor changes. The HFS 144 proposed rule changes affect time sensitive vaccine requirements and were made so the Department's immunization requirements adhere to new vaccine recommendations made by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP.) For example, the current requirement for Measles-Mumps-Rubella vaccine (MMR) is two doses with the first dose received on or after the first birthday. New ACIP recommendations allow a 4-day grace period so children receiving doses four days before their first birthday would be compliant. The current requirements in chapter HFS 144 do not accept as valid a dose of MMR that was given even one day prior to the first birthday. Similar time sensitive changes impact the vaccine requirement for a dose

of DTaP vaccine after the fourth birthday and a dose of Hib vaccine after the first birthday.

These changes need to be in place before the start of the new 2003-04 school year. Although the changes are minor in nature, they have a significant effect on the law's enforcement at the day care and school level. Again, using MMR as an example, without the change, the school will count the child that received the MMR one day before the first birthday as non-compliant. Non-compliance can, pursuant to s. 252.04 (5), Stats., result in exclusion from school or, pursuant to s. 252.04 (6), Stats., the name of the non-complaint student being turned over to the local district attorney's office for possible court action against the parents. Therefore, the child will either need to be re-immunized or the parent will need to sign a waiver, pursuant to s. 252.04 (3), Stats. The re-immunization requirement puts the school at odds with the health care provider that is currently acting in accordance with the revised ACIP recommendations. The signing of a waiver is not a desirable option as the school reporting process to the Department counts that child as waiving all vaccine requirements and will yield misleading information as to the Immunization Law compliance level of Wisconsin day care and student populations. The Department's Immunization Program sends Immunization Law packets to the schools in mid-August. These packets include the information the schools need for enforcement of the law when school starts in September. It is imperative that the Department have the rule changes in place before the start of the school year and include the information in the school packets. Therefore, the Department is issuing this emergency order to allow school districts and health professionals to act in a timely manner.

Publication Date: August 15, 2003
Effective Date: August 15, 2003
Expiration Date: January 12, 2004
Hearing Date: September 12, 2003

Insurance (2)

- Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2003.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 03-039, will be filed with the secretary of state in time to take effect October 1, 2003. Because the fund fee provisions of this rule first apply on July 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 14, 2003.

Publication Date: June 11, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003

2. Rules adopted creating **s. Ins 8.49**, relating to Small Employer Uniform Employee Application.

Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03-055, with the secretary of state within the next 150 days. Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

Publication Date: August 1, 2003
Effective Date: August 1, 2003
Expiration Date: December 29, 2003

Natural Resources (2) **(Fish, Game, etc., Chs. NR 1-)**

1. Rules were adopted revising **ch. NR 10**, relating to the 2003 migratory game bird season.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 29, 2003
Effective Date: August 29, 2003
Expiration Date: January 26, 2004
Hearing Date: October 14, 2003

2. Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: September 11, 2003
Effective Date: September 11, 2003
Expiration Date: February 8, 2004
Hearing Date: October 13, 2003

Revenue

- Rule adopted revising **s. Tax 18.07**, relating to the 2004 assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), Stats., the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5-year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three-year lag in determining the 5-year average. Thus, the 2003 use value is based on the 5-year average corn price, cost and yield for the 1996-2000 period, and the capitalization rate is based on the 5-year average interest rate for the 1998-2002 period. The 2004 use value is to be based on the 5-year average corn price, cost and yield for the 1997-2001 period, and the capitalization rate is to be based on the 1999-2003 period.

The data for the 1997-2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997-2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

Publication Date: October 3, 2003
Effective Date: October 3, 2003
Expiration Date: March 1, 2004

Workforce Development

(Workforce Solutions, Chs. DWD 11—59)

Rules adopted revising **ch. DWD 59**, relating to the child care local pass-through program.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass-through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state's federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass-through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low-income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass-through program by 86%. Chapter DWD 59 requires a 2-step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass-through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low-value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay-off staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and

spent within the federal fiscal year of October 1 to September 30.

Publication Date: October 7, 2003
Effective Date: October 7, 2003
Expiration Date: March 5, 2004
Hearing Date: November 12, 2003
[See Notice this Register]

Workforce Development

(Civil Rights, Chs. DWD 210—)

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

Publication Date: August 5, 2003
Effective Date: August 5, 2003
Expiration Date: January 2, 2004
Hearing Date: October 27, 2003

Scope statements

Employment Relations Commission

Subject

Increasing the existing filing fees for Commission services so the Commission can retain employees necessary to avoid significant harm to the Commission's ability to provide timely dispute resolution services.

Policy analysis

Current and increased filing fees paid by users of Commission services provide program revenue support for employees who provide dispute resolution services that preserve labor peace in Wisconsin.

Statutory authority

Sections 111.09, 111.71, 111.94 and 227.11, Stats.

Staff time required

25 hours.

Insurance

Subject

Relating to mortality tables and actuarial analysis, asset adequacy testing, reports and opinions.

Objective of the rule. The proposed rule would allow life insurers to use the 2001 CSO Mortality Table to calculate reserves and non-forfeiture benefits on life policies. The proposed rule will also revise contains requirements regarding the testing and reporting of actuarial information by life insurers including fraternal benefit societies and revise the current mortality table rule.

Policy analysis

The existing requirements are contained primarily in s. Ins 2.80 and Subch. V of Ch. 50, Wis. Adm. Code. These provisions establish the mortality tables to be used by insurers to calculate reserves and non-forfeiture benefits and the requirements relating to testing and reporting of actuarial information. The proposed rule will allow use of an updated mortality table prepared by the National Association of Insurance Commissioners. This is under consideration because the table prepared by the NAIC more closely reflects current mortality experience. The proposed rule also will revise the requirements of testing and reporting actuarial information to eliminate some exemptions from asset adequacy analysis, and provide for more focused information in the actuarial opinion and memorandum. This proposed rule is under consideration because it is recommended for adoption by the NAIC, will increase the ability of management and regulators to monitor financial status, and assist with solvency regulation and analysis.

Statutory authority

Sections 601.41, 601.42 and s. 628.34 and chs. 623 and 632, Stats.

Staff time required

100 hours.

Insurance

Subject

Regarding Chapter Ins 50, Wis. Adm. Code, relating to annual audited financial reports, annual financial statements and examinations.

Objective of the rule. The purpose of this rule is to assure the availability of timely and reliable information concerning the financial condition of insurers by prescribing reasonable minimum standards and techniques of accounting and data handling.

Policy analysis

This rule clarifies the definition of work papers to reflect current technology, allows for disqualification of accounting firms or accountants who enter into agreements of indemnification with respect to insurer audits, and expands the duties and protection of accountants who conduct insurer audits.

Statutory authority

Sections 601.41 (3), 601.42 (3), 601.43 (3) and 601.43 (4), Stats.

Staff time required

100 hours.

Natural Resources

Subject

Objective of the rule. The Department's Bureau of Air Management proposes to develop rules in ch. NR 490 describing when an air pollution control permit becomes effective if the permit applicant seeks a contested case hearing on the permit.

The proposed rule is being developed in response to a decision issued in a Dane County Circuit Court case wherein Wisconsin Manufacturers and Commerce (WMC) and others sought a declaratory judgment on the Department's interpretation of the statute regarding permit appeals. While the Judge found the case was not ripe for declaratory judgment, she agreed with the plaintiff's contention that the Department's interpretation of the statute should be promulgated as administrative rules. The Judge ordered the Department to commence the rulemaking process within 40 days of its order and to diligently pursue rulemaking. She also ordered that the Department's current interpretation of the statute may continue to apply until the rules are promulgated.

Policy analysis

The Department's interpretation of the statute regarding permit appeals is that the entire permit or determination issued by the Department is stayed (not in effect) if it is appealed by the permit applicant. The Department plans to incorporate this interpretation in the proposed rules. Other policy alternatives have been sought by the regulated community, specifically that only that part of the permit appealed is stayed, while the rest of the permit takes effect. These alternatives will be debated as part of the rulemaking process.

Statutory authority

Sections 227.11 (2) (a) and 285.81, Wis. Stats., and Dane County Circuit Court Decision in WMC v. WDNR, (2003).

Staff time required

The Department estimates that it will spend approximately 326 hours of staff time developing this rule.

Natural Resources**Subject**

Subject

Amendment of chs. NR 190 and 191 relating to the establishment of a new 50% cost–share grant program for local units of government to prevent the spread and control of invasive aquatic species in the waters of the state.

Policy analysis

Section 23.22 (2) (c), Stats., directs the DNR to write rules to establish cost–share grants for the control of invasive species as part of a statewide invasive species control program. The new cost–share funding is available for local units of government to work with the state to deal with invasive species in inland lakes, streams and the Great Lakes. Careful consideration will be given to the types of activities that will be eligible for the \$500,000 annual allotment. Preventing further spread of invasive species to other bodies of water will need to be balanced with the demand for projects to control existing and pioneer invasions in our waterways. While methods of prevention are well known, effective or lasting control methods have yet to be developed or perfected for many invasive aquatic species.

Statutory authority

Section 23.22 (2) (c), Stats.

Staff time required

The DNR will need approximately 210 hours.

Pharmacy Examining Board**Subject**

Current requirements of s. Phar 7.04 exclude the return or exchange of health items from community–based residential facilities, (CBRF's), jails or prison facilities, which are excluded from the definition of "inpatient health care facility". Phar 7.04 would be modified to include CBRF's, jails or prison facilities as a facility from which prescription drugs could be returned or exchanged, under limited circumstances.

Objective of the rule. The objective of modifying Phar 7.04 is to address unnecessarily incurred cost and inconvenience to patients or state agencies currently unable to return or exchange dispensed prescription drugs to the pharmacy from which they were dispensed. In instances where security and storage of dispensed prescription drugs in the CBRF, jail or prison facility context insures that the drugs are not defective, adulterated, misbranded or dispensed beyond their expiration date, such drugs would be treated similar to those dispensed in the inpatient health care facility context.

Policy analysis

The rationale for the current practices allowed by s. Phar 7.04 will be reviewed to determine whether a proper distinction and difference in treatment can continue to be drawn in every CBRF, jail or prison facility context pertaining to the return or exchange of prescription drugs. Those instances of proper security and storage will be identified where possible, in combination with applicable administrative rules of the Department of Health and Family

Services and Department of Corrections to cooperatively develop modifications to s. Phar 7.04 to allow increased dispensing flexibility to better meet patient need.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), and ch. 450. Stats.

Staff time required

100 hours.

Public Instruction**Subject**

Commencement of School Term.

Policy analysis

Chapter PI 27, relating to the commencement of a school term, is being modified to allow a specific high school in Milwaukee to begin classes prior to September 1 without making an annual waiver request to the department. This high school is a registered participant in the International Baccalaureate Program and has 90 percent of its pupils involved in the program. The program has a standardized examination schedule. The examination period is usually scheduled for early May. In 2004, the examination period is May 4 – 20, 2004. The program has prescribed curriculum and designated courses which have to be covered by the examination date. Because the instructional component of the program would not be completed in time to take the examinations given in May each year, the high school's school term must start prior to September 1.

Policy alternatives

Maintain current law.

Statutory authority

Sections 118.045 (3) and 227.11 (2) (a), Stats.

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Revenue**Subject**

Notice is hereby given, pursuant to s. 227.135, Wis. Stats., that the Department of Revenue plans to promulgate rules related to the administration of the 2004 use value assessment for agricultural land.

Objective of the rule. To ensure positive and stable 2004 assessments for agricultural land.

Policy analysis

Pursuant to s. 70.32 (2r) (c), agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three-year lag in determining the 5-year average. Thus, the 2003 use value is based on the 5-year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5-year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5-year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values. The department has promulgated an emergency rule, effective October 3, 2003, that would hold the 2004 use values at 2003 levels. The department intends to promulgate a permanent rule to the same effect.

Statutory authority

Section 227.11 (2), Stats.

Staff time required

The total anticipated time commitment to the development of the rule is 120 hours.

Tourism

Subject

Ch. Tour 1 – relating to the joint effort marketing program.

Objective of rule. The objectives of the rule are to amend Ch. Tour 1 to allow the secretary of the department to waive the requirement that a project be directed at a local area if that project will make a substantial impact upon the state's tourism economy.

Policy analysis

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Joint Effort Marketing program provides grants to non-profit organizations engaged in tourism activities that are directed at increasing tourism spending in a local area. Grant funds may be used for the development of publicity, the production and media placement of advertising and direct mailings that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

Funding may be used for advertising of an event, for advertising of a sales promotion and for destination marketing advertising that is not tied to an event or promotion, but which is directed at extending the tourism market for the applicant and which has been identified by the Department as a market for the state.

The proposal would allow the secretary of the department to waive the requirement that a project be directed at a local area if that project will make a substantial impact upon the state's tourism economy.

The policy alternatives are to leave the program regulations as they are or to adopt the change being proposed.

Statutory authority

The statutory authority for the rule is s. 41.17 (4) (g), Stats.

Staff time required

The Department estimates that it will take approximately 10 hours of staff time on the rule, which includes discussing the rule with the Council on Tourism and interested members of Wisconsin's tourism industry.

Submittal of rules to legislative council clearinghouse

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Elections Board

Rule Submittal Date

On October 3, 2003, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)
Statutes interpreted: ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10

The rules prescribe the standards for filing officers to determine whether nomination papers comply with the requirements of ch. 8, Stats., and provide guidance to candidates and other circulators to enable them to so comply. The old rule, requiring that the circulator reside in the district in which a nomination paper or petition was being circulated, was no longer consistent with the decision of Judge Barbara Crabb in *Frami et al. v. Ponto et al.*, United States District Court for the Western District of Wisconsin, Case No. 02-C-515-C. Pursuant to that decision, the Elections Board is enjoined from enforcing a residency requirement with respect to the circulators of nomination papers.

Agency Procedure for Promulgation

The Elections Board is following the 30-day notice procedure, under s. 227.16 (2) (e), Stats., for the promulgation of these rules.

Contact

The agency person responsible for internally processing these rules is George A. Dunst, legal counsel for the State Elections Board.

Workforce Development

Rule Submittal Date

On October 13, 2003, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 49.137 (4m) and 227.11, Stats.
The proposed rules affect Ch. DWD 59, relating to the child care local pass-through program.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 12, 2003. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact

Elaine Pridgen
(608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 03 –094]

(Reprinted from 10/15/03 Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to amend ch. ATCP 143, relating to production and sale of corn. The department will hold three hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until December 15, 2003, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Development, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–5140. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by October 30, 2003, by writing to Noel Favia, Division of Agricultural Development, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–5140. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Monday, November 17, 2003, 1:00 p.m. until 3:00 p.m.

Lafayette County Courthouse
646 Main Street
County Board Room
Darlington, WI 53530
Handicapped accessible

Tuesday, November 18, 2003, 1:00 p.m. until 3:00 p.m.

WDATCP State Office Building
2811 Agricultural Drive
Madison, WI 54708–8911
Handicapped accessible

Wednesday, November 19, 2003, 1:00 p.m. until 3:00 p.m.

Portage County Courthouse
1516 Church Street
Stevens Point, WI 54481
Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1) and 96.04, Stats.

Statutes interpreted: ch. 96, Stats.

This rule modifies Wisconsin's current corn marketing order, ch. ATCP 143, Wis. Adm. Code. This rule increases marketing order assessments, and changes the coverage of the marketing order. This rule must be approved in a referendum of affected producers before it can take effect. Producers

affected by the current marketing order or by the proposed changes will be eligible to vote in the referendum.

Background

Under ch. 96, Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) may adopt marketing orders for agricultural commodities. Marketing orders impose assessments on affected producers. Assessments may be used to finance market development, research and educational programs. Affected producers must, by referendum, approve the marketing order. A marketing board, elected by affected producers, collects and spends assessments for purposes authorized in the marketing order. DATCP regulates marketing boards to ensure that they comply with the law and the marketing order.

Current Corn Marketing Order

DATCP adopted the current corn marketing order in 1983, and has not amended the marketing order since then. Under the current marketing order, "affected producers" must pay an assessment of 1/10th of one cent per bushel on corn produced in this state, if that corn is sold into commercial channels in this state or another state.

Handlers who buy corn from "affected producers" must collect the assessments from the producers, and remit payment on behalf of the producers to the Corn Marketing Board. Handlers must keep records, and report to each producer the assessments collected from that producer and remitted to the marketing board. "Affected producers" who sell corn to an out-of-state handler must pay assessments to the marketing board (if the out-of-state handler fails to collect and remit the assessments on behalf of the producers).

The Corn Marketing Board is a 9-member board elected by "affected producers" who are subject to assessment under the corn marketing order. "Affected producers" are currently defined as producers who grow corn in this state and sell that corn in commercial channels this state or another state. Members of the Corn Marketing Board are elected to represent 9 separate districts in the state. Board members must reside in the districts they represent (even if they grow corn in another district). "Affected producers" must reside in the district in which they vote (even if they grow corn in another district).

Proposed Changes

Increased Assessment

This rule increases the assessment paid by "affected producers" under the corn marketing order, from 1/10th of one cent per bushel (current assessment) to 1/2 cent per bushel (proposed assessment).

Producers Subject to Assessment

This rule changes the basis on which assessments are collected, and changes the set of producers who are subject to assessment. Under this rule, an "affected producer" must pay an assessment on corn that the producer sells in this state, regardless of where the corn is grown. As a result of this change, a producer who grows corn in this state for sale in another state will no longer pay assessments on that corn. A producer who grows corn in another state, for sale in this state, will for the first time pay assessments on that corn.

Exemptions

Current rules exempt some corn from assessment. This rule retains and clarifies the current exemptions. Under this

rule, an affected producer is not required to pay assessments on any of the following:

- Corn that the producer produces for his or her own use (does not sell).
- Corn sold for seed.
- Corn sold directly to a buyer, other than a grain dealer who is required to be licensed under ch. 126, Stats., who uses the corn to feed the buyer's own livestock.

Handler Obligations

Under this rule, handlers in this state must collect assessments on grain that the handlers purchase in this state from in-state or out-of-state producers, and must remit those assessments to the marketing board on behalf of those affected producers. This rule clarifies that the handler's obligation to the marketing board accrues when the handler takes title to the grain, regardless of the date of grain pricing or payment, and regardless of the form in which the handler pays the affected producer for the grain.

Under this rule, as under the current rule, the handler must pay an assessment to the marketing board within 15 days after the end of the month in which the handler's obligation to the marketing board accrues. Under this rule, as under the current rule, DATCP or the marketing board may require the handler to provide relevant records and reports to DATCP or the marketing board.

Under this rule, as under the current rule, a handler must report to an affected producer each assessment that the handler collects from that producer. Handlers typically include these reports in their grain transaction settlement statements to producers. This rule clarifies that a handler who reports assessments as part of the normal settlement reporting process is not required to provide a separate annual statement to an affected producer.

Marketing Board Elections

This rule changes voter eligibility requirements in marketing board elections, to correspond with changes in marketing order coverage. Under this rule, all producers who are required to pay assessments to the marketing board will be eligible to vote in marketing board elections. Thus, in-state and out-of-state producers who pay assessments on corn that they sell in this state will be eligible to vote in marketing board elections, and run for election to the marketing board. Producers who grow corn in this state, but sell all of their corn in other states, will no longer pay assessments as "affected producers" and hence will not be eligible to participate in marketing board elections.

Under this rule, an "affected producer" may vote or run for election in a marketing board district in which the producer resides or, if the "affected producer" resides outside this state, in a district where the "affected producer" sells corn in this state. An out-of-state producer who sells corn in more than one district in this state may vote and run for election in only one of those districts.

This rule clarifies, per current provisions of ch. ATCP 140, Wis. Adm. Code, that the marketing board may reapportion districts only with the approval of DATCP secretary. This rule clarifies, but does not substantially alter, other procedures for nominating, electing and ensuring the eligibility of marketing board members.

Fiscal Estimate

This rule would have no fiscal impact on DATCP or local units of government, beyond the estimated \$24,000 cost of adopting the rule. The Wisconsin Corn Promotion Board (CPB) would reimburse this cost.

This rule would increase revenues to the Wisconsin Corn Promotion Board (CPB). The CPB currently collects approximately \$183,000 per year in producer assessments. Under this rule, CPB would collect approximately \$915,000 per year in producer assessments.

Initial Regulatory Flexibility Analysis

This rule would affect approximately 23,000 corn producers, and approximately 300 handlers who collect and remit marketing order assessments on behalf of corn producers. Many of these producers and handlers are "small businesses."

This rule would increase producer assessments, from an average current assessment of approximately \$8 per producer per year to an average proposed assessment of approximately \$40 per producer per year. Actual assessment amounts would vary by producer. Some producers who currently pay assessments would no longer pay assessments under this rule (producers who grow corn in this state but sell all of their corn out-of-state). Other producers would pay assessments for the first time under this rule (out-of-state producers who sell corn in this state).

This rule must be approved in a referendum of affected producers. Producers who are affected either by the current rule, or by the proposed rule, will be allowed to vote in the referendum. As under the current rule, any producer who pays assessments under the proposed rule would have the option of demanding a refund of those assessments from the CPB. The CPB would be required to refund producer assessments upon demand, as under the current rule.

This rule would not have a large impact on handlers, although the change in rule coverage could require some handlers to collect and remit assessments for a slightly different set of producers. This could require some initial adjustment in billing and recordkeeping operations.

Notice of Proposed Rule

Elections Board

[CR 03 –100]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rules as proposed in this notice without public hearing unless within 30 days after publication of this notice, **November 1, 2003**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis Prepared by State Elections Board

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

Statutes interpreted: ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10

The rules prescribe the standards for filing officers to determine whether nomination papers comply with the requirements of ch. 8 of the Wisconsin Statutes and provide guidance to candidates and other circulators to enable them to so comply. The old rule, requiring that the circulator reside in the district in which a nomination paper or petition was being circulated, was no longer consistent with the decision of Judge Barbara Crabb in *Frami et al. v. Ponto et al.*, United States District Court for the Western District of Wisconsin, Case No. 02-C-515-C. Pursuant to that decision, the Elections Board is enjoined from enforcing a residency

requirement with respect to the circulators of nomination papers.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board hereby amends ss. EIBd 2.05 (14) and 2.07 (5), interpreting ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50(3) (a) and 9.10, Stats., as follows:

Text of Rule

SECTION 1. EIBd 2.05 (14) is amended to read:

EIBd 2.05 (14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. ~~No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.~~

SECTION 2. EIBd 2.07 (5) is amended to read:

EIBd 2.07 (5) Where it is alleged that the signer ~~or~~ circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt to establish the geographical location of an address indicated on a nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Contact Person

George A. Dunst
Legal Counsel, State Elections Board
132 E. Wilson Street, P.O. Box 2973
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Notice of Hearing

Wisconsin Employment Relations Commission

NOTICE IS HEREBY GIVEN that pursuant to ss. 111.09, 111.71, 111.94 and 227.24, Stats., and interpreting ss. 111.09, 111.71, and 111.94, Stats., the Wisconsin Employment Relations Commission will hold a public hearing in the Commission's Conference Room at 18 South Thornton Avenue in the City of Madison, Wisconsin on the **20th day of November, 2003**, at 11:00 a.m. regarding the Commission's promulgation of the following emergency rules increasing filing fees.

The Commission invites the public to attend the hearing and to present verbal and/or written comments regarding the emergency rules. In addition to or instead of verbal testimony, written comments can also be sent directly to the Commission at werc@werc.state.wi.us or at Wisconsin Employment Relations Commission, P.O. Box 7870, Madison, Wisconsin 53707-7870. Written comment should be received by the Commission on or before **December 1, 2003**.

Text of Rule

SECTION 1. ERC 1.06 (1), (2) and (3) are amended to read:

ERC 1.06 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.06, Stats., the complaining party or parties shall pay the commission a filing fee of \$40. ~~\$80~~. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.10, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125. ~~\$250~~.

(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.11, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125. ~~\$250~~.

SECTION 2. ERC 10.21 (1), (2), (3), (4) and (5) are amended to read:

ERC 10.21 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that a prohibited practice has been committed under s. 111.70(3), Stats., the complaining party or parties shall pay the commission a filing fee of \$40. ~~\$80~~. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.70 (4) (c) 2., or (cm) 4., Stats., the parties to the dispute shall each pay the commission a filing fee of \$125. ~~\$250~~.

(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.70 (4) (c) 1. or (cm) 3., Stats., the parties to the dispute shall each pay the commission a filing fee or \$125. ~~\$250~~.

(4) FACT-FINDING. At the time a request is received asking the commission to initiate fact-finding under s. 111.70 (4) (c) 3., Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, ~~\$250~~, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

(5) INTEREST ARBITRATION. At the time a request is received asking the commission to initiate interest arbitration under s. 111.70 (4) (cm) 6., (4) (jm) or 111.77 (3), Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, ~~\$250~~, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

SECTION 3. ERC 20.21 (1), (2), (3) and (4) are amended to read:

ERC 20.21 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.84, Stats., the complaining party or parties shall pay the commission a filing fee of \$40. ~~\$80~~. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.86, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125. ~~\$250~~.

(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.87, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125. ~~\$250~~.

(4) FACT-FINDING. At the time a request is received asking the commission to initiate fact-finding under s. 111.88, Stats., the parties to the dispute shall each pay the commission a filing fee of \$125, ~~\$250~~, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

Analysis Prepared by the Wisconsin Employment Relations Commission

The emergency rules provide the increased filing fee revenue needed to support 2.0 Program Revenue positions authorized by 2003 Wisconsin Act 33.

Initial Regulatory Flexibility Analysis

Small businesses rarely use those Commission's services impacted by the increase in filing fees. The occasional impact on small business of the fee increase will be limited to payment of the employer share of the increased fees.

Fiscal Estimate

During the last four fiscal years, WERC has averaged \$225,000 in filing fee revenue.

WERC estimates that doubling the existing filing fee levels will produce some reduction in the requests for WERC fee-related services but produce an additional \$200,000 in fee revenues annually.

Because the vast majority of filing fee revenue is derived from services for which the union and employer each pay 50% of the fee and because the vast majority of the WERC's fee-related services are provided to public sector employers and the unions representing their employees, WERC anticipates that doubling the existing fees will increase the costs of public sector employers by \$100,000 annually.

Contact Person

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Notice of Hearing Workforce Development

(Workforce Solutions, Chs. DWD 11 to 59) [CR 03-101]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.137 (4m) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes to ch. DWD 59, relating to the child care local pass-through program.

Hearing Information

Wednesday, November 12, 2003

GEF 1 Building, Room B103
201 E. Washington Avenue
Madison, WI
1:30 p.m.

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearings, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English

translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.137 (4m) and 227.11, Stats.

Statutes interpreted: Section 49.137 (4m), Stats.

Relevant federal law: 42 USC 9858 to 9858q; 45 CFR Part 98

The federal Child Care and Development Fund (CCDF), a federal block grant, makes federal child care funding available to states that can contribute the required match at the state's federal medical assistance percentage (FMAP) rate. Wisconsin's current FMAP rate is approximately 42%. The state child care local pass-through program began in 1999 to bring federal CCDF funds into the state that had been left unmatched in the state budget. Through the child care pass-through program, the department awards grants to all local governments and tribes that supply the match required to bring the funds into the state. In the three grant cycles that have occurred thus far, \$11.4 million, \$14 million, and \$17.25 million have been awarded for services in approximately 66 counties to fund activities such as accommodation of children with disabilities, education of providers, and staff retention strategies.

Increased match rate. 2003 Wisconsin Act 33 allocated the state's CCDF funds in a manner that assumes an increase in the match rate that local governments and tribes must contribute to receive pass-through funds. Federal law requires that federal CCDF funds received by the state as a whole be matched at the state's FMAP rate. 2003 Wisconsin Act 33 allocated some of the state's CCDF funds to the direct child care subsidy program under s. 49.155, Stats., with match through general purpose revenue at less than the state's FMAP rate. Budget documents indicate that the legislature intended that local governments contribute a higher match under the pass-through program to cover the state match shortfall in the direct subsidy program and ensure that Wisconsin does not lose valuable federal child care dollars available under CCDF. The Legislative Fiscal Bureau document entitled *Comparative Summary of Budget Recommendations—Governor and Joint Committee on Finance, June 2003* specifies that the Joint Finance option for funding the pass-through program, which was eventually adopted, would require local agencies to contribute 52% matching funds in 2003-2004 and slightly more in 2004-2005. This document is available at <http://www.legis.state.wi.us/lfb/2003-05budget/JFC/dwd.pdf>. The pass-through program is discussed at page 35 of the Workforce Development paper and page 731 of the comprehensive document. The current Chapter DWD 59 requires that local governments and tribes contribute matching funds at the FMAP rate to be eligible for pass-through funds. This order amends the rule so that the match rate for a given year will be dependent on legislative allocation of federal CCDF funds. The department will determine the match rate to be either the FMAP rate or a higher percentage rate needed to meet the state's match requirements under federal CCDF law and state budget appropriations under Chapter 20, Stats.

Administrative process. 2003 Wisconsin Act 33 also reduced funding to the child care local pass-through program by 86%. This dramatically reduced funding necessitates a change in the process for awarding grants. Chapter DWD 59 currently requires a 2-step grant process wherein a statewide request for continuation plans is issued and grants awarded for continuing grants, with funds set aside for a second statewide request for proposals for initial grants. Current grantees receive up to 75% of the funds under a noncompetitive

process for 2 years following the receipt of the initial grant, and can compete, along with any eligible jurisdiction in the state, for the remaining 25% or more as initial grantees under the same matching terms.

This rulemaking order changes that process to allow all funds to be committed to continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous two grant cycles. Jurisdictions receiving continuing grants generally provide more service for the program dollar because they have already done the start-up work and are building the sustainability of programs that are filling a community need. There are currently 63 initial grantees representing approximately 130 jurisdictions in over 60 counties. If grants were awarded to new grantees, the amount of initial grants that could be awarded would be quite small, given the limited funding for the pass-through program. An inordinate amount of these small grants would be spent on start-up costs and some grantees may reject the grant once it is awarded.

Even if the grant process is not changed to allow all funds to be committed to continuing grants, it is likely that current grantees would still receive most of the funds available under the open initial grant process. While the initial grants process is open and awards funds to all eligible applicants, current grantees are likely to claim most, if not all, of the funds available under any new initial grants process. They were the only jurisdictions submitting eligible applications in 2002, have demonstrated interest in the pass-through program, have services in progress that are facing significant budget shortfalls, have experience with the grant application process, and have the matching funds in hand. A two-step grant award process with such limited funds available to distribute is unwieldy and wasteful. The same people at the local level are likely to be filling out 2 applications to receive both a continuing and initial grant, while department staff would have the workload of preparing, distributing, reviewing, and calculating 2 sets of grant awards. This would not only waste state and local staff resources on low-value administrative processes, it would waste state and local public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service

in order to work.

This order also amends the rule to provide that if initial grants are awarded, no initial grant will be awarded if the amount would be less than \$500.

Initial Regulatory Flexibility Analysis

The proposed rules do not affect small business as defined in s. 227.114, Stats.

Fiscal Impact

The match rate paid by local governments that receive a pass-through grant will increase from approximately 42% to approximately 52% for the current biennium and may vary in future years depending on legislative allocation of federal CCDF dollars. The increased match for pass-through grants will cover the GPR shortfall in funds appropriated to the child care direct subsidy program and allow Wisconsin to draw the full federal funding available under the Child Care Development Funds (CCDF) block grant.

For the current biennium, the rule change allows state government to receive \$1,289,800 in federal CCDF dollars that would have otherwise been left undrawn. 2003 Wisconsin Act 33 provides \$2,475,100 in SFY04 and \$2,478,500 in SFY05 for local pass-through grants. Based on these appropriations, the increased match rate will increase cost to local governments by \$918,400.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **November 14, 2003**, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

**Commerce
(CR 02–129)**

Chs. Comm 2, 81 to 85, and 91, relating to private onsite wastewater treatment systems and sanitation.

**Employee Trust Funds
(CR 03–062)**

Ch. ETF 20, relating to the annuity dividend effective date.

**Ethics Board
(CR 03–061)**

Ch. Eth 1, relating to the identification of a topic of a lobbying communication that relates to an attempt to influence administrative action.

**Health and Family Services
(CR 03–010)**

Ch. HFS 39, relating to voluntarily relinquishing custody of a newborn who is 72 hours old or younger.

**Hearing and Speech Examining Board
(CR 03–025)**

Chs. HAS 2 to 6, relating to definitions, grounds for discipline and minor and technical changes.

**Public Service Commission
(CR 03–003)**

Chs. PSC 113 and 119, relating to interconnecting distributed generators to electric distribution systems.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Financial Institutions—Securities (CR 03-068)

An order affecting ch. DFI—Sec 4, relating to securities broker-dealer books and record-keeping requirements.
Effective 12-1-03.

Financial Institutions—Securities (CR 03-069)

An order affecting chs. DFI—Sec 2 and 8, relating to securities registration exemptions and administrative procedure-contested case rules.
Effective 12-1-03.

Gaming Division (CR 03-070)

An order affecting the Wisconsin Gaming Commission codes, relating to greyhound racing and pari-mutuel wagering.
Effective 12-1-03.

Natural Resources (CR 03-051)

An order affecting ch. NR 10, relating to the 2003 migratory game bird season.
Effective 12-1-03.

Nursing (CR 03-009)

An order affecting ch. N 4, relating to the practice of nurse-wives.
Effective 12-1-03.

Tax Appeals Commission (CR 03-040)

An order affecting ch. TA 1, relating to petitions for review.
Effective 12-1-03.

Workforce Development (CR 03-022)

An order affecting ch. DWD 40, relating to the child support guidelines.
Effective 1-1-04.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **October 31, 2003**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Accounting Examining Board (CR 02-149)

An order affecting ch. Accy 3, relating to a new computer-based examination. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 03-012)

An order affecting ch. Comm 45, relating to mechanical refrigeration. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

Sections 101.02 (15) (h) to (j), 101.17 and 101.177, Stats., authorize the Department to promulgate rules prescribing minimum safety standards for the design, construction, installation, operation, inspection, repair and maintenance of mechanical refrigeration systems utilized at public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 03-012 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 03-046)

An order affecting ch. Comm 108, relating to the deployment of rapid response funds to preserve economic development in Wisconsin. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule does not impose any cost measures or investments by small business. No issues were raised by small business at hearings, nor were any comments received during the open comment period.

Summary of Comments by Legislative Review Committees

No comments were received.

Emergency Management (CR 02-106)

An order affecting chs. WEM 4 and 6, relating to the hazardous materials transportation program and response and reimbursement procedures for regional and local emergency response teams. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The statutory authority for WEM 4 has been repealed. The previous version of WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. The repeal of WEM 4 will have no effect on small business.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. It is estimated that costs to respond to a potential release would typically be \$500 or less. To date there have not been more than 3 such incidents annually. This rule change will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 03-048)

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP). Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance the Health Insurance Risk-Sharing Plan (HIRSP), no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer's assessment to help finance HIRSP is to be determined.

Summary of Comments by Legislative Review Committees

No comments were received.

**Insurance
(CR 03-038)**

An order affecting ch. Ins 17, relating to requiring insurers and self-insurers provide notice to the fund of the filing of out-of-state medical malpractice actions against Wisconsin health care providers. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

**Insurance
(CR 03-039)**

An order affecting ch. Ins 17, relating to annual patients compensation fund fees beginning July 1, 2003 and establishing a rate of compensation for fund peer review council members and consultants. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

**Natural Resources
(CR 02-048)**

An order creating ch. NR 336, relating to the small and abandoned dam removal grant program. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

Small business impacts are considered minor and indirect. The rule does not require small businesses to be an applicant, though some small business dam owners may decide to apply for a grant. Applicants of all types (municipalities, counties, individuals, public inland lake protection and rehabilitation districts or small businesses) must equally comply with standard grant accounting and reporting requirements.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On August 6, 2003, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the hearing.

**Natural Resources
(CR 02-146)**

An order affecting chs. NR 400, 409, 410, 415, 419, 420, 422, 423, 431, 439, 447, 448, 449 and 484, relating to clarification of compliance language for air management regulations. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rule revisions may affect any party regulated by air management regulations, including small

businesses. Because of the clarifying nature of the changes, there should be no adverse effects on any parties.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On July 9, 2003, the Assembly Committee on Natural Resources held a public hearing. No request for modifications was received as a result of the hearing.

**Natural Resources
(CR 02-147)**

An order affecting ch. NR 809, relating to Safe Drinking Water requirements for public water systems. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

Stringency of the proposed rule revisions cannot be reduced without violating federal law. The U.S. EPA will not grant the Department primacy for the Interim Enhanced Surface Water Treatment Rule and Disinfectants/Disinfection By-products Rule if the proposed revisions are not implemented.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On July 9, 2003, the Assembly Committee on Natural Resources held a public hearing. No request for modifications was received as a result of this hearing.

**Natural Resources
(CR 03-014)**

An order affecting ch. NR 19, relating to fishing on the inland and outlying waters of Wisconsin. Part effective 12-1-03. Part effective 3/1/04. Part effective 4/1/04.

Summary of Final Regulatory Flexibility Analysis

These rules will not directly affect small business pursuant to s. 227.114 (8) (b), Stats., therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On July 9, 2003, the Assembly Committee on Natural Resources held a public hearing. No requests for modifications were received as a result of these hearings.

**Natural Resources
(CR 03-018)**

An order affecting chs. NR 10, 12 and 19, relating to agricultural damage, hunting and trapping regulation changes. Part effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee

on Environment and Natural Resources. On August 6, 2003, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the hearing.

**Natural Resources
(CR 03-030)**

An order affecting chs. NR 16 and 19, relating to captive wildlife and frogs. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed revisions to chs. NR 16 and 19 pertain to rules relating to the possession, use, propagation, killing, hunting, stocking, exhibiting, sale and purchasing of captive wild animals. These rules do impose compliance and reporting requirements on small business. Businesses selling native reptiles and amphibians and bird hunting preserves are not significantly affected by the proposed rules.

The rules do contain a number of provisions of record keeping and reporting requirements for business. The department considered possible implications of these requirements and kept the record keeping and reporting to what is actually necessary to ensure effectiveness of the rule and meet the statutory objectives.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On August 6, 2003, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the hearing.

**Natural Resources
(CR 03-031)**

An order affecting ch. NR 17, relating to dog training, dog trials and dog clubs. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed revisions pertain to rules relating to the possession and dog training and trials with captive wild animals. These rules do impose compliance and reporting requirements on small business. The vast majority of dog training licenses are issued to individuals who train their own dogs; however, a number of people who train dogs professionally also acquire the license so they can possess captive wild birds and animals for dog training purposes.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee

on Environment and Natural Resources. On August 6, 2003, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the hearing.

**Natural Resources
(CR 03-034)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Land and the Managed Forest Law. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule does affect small business. Small private forest landowners and forest industries enrolled under the Forest Crop Law and the Managed Forest Law are required by statute to pay 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Environment and Natural Resources. There were no comments.

**Public Instruction
(CR 03-006)**

An order affecting ch. PI 7, relating to pupil transportation. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule does not impact small businesses as defined in s. 227.114, Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Veterans Affairs
(CR 03-045)**

An order affecting ch. VA 13, relating to the imposition of rental charges at regional transitional housing sites under the veterans assistance program. Effective 11-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule is not expected to have any adverse impact upon small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **October 2003**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Accounting Examining Board

Ch. Acy 3

SS. Acy 3.06 and 3.07

Commerce

Ch. Comm 45 (Entire chapter)

Ch. Comm 108

S. Comm 108.03 (23) to (29)

S. Comm 108.06 (Table)

S. Comm 108.07 (2) and (6)

S. Comm 108.14 (1) (f), (i) and (j), (2) (g), (j) and (L)

S. Comm 108.15

S. Comm 108.24 (1), (2) (d) and (f)

Emergency Management

Ch. WEM 4 (Entire chapter)

Ch. WEM 6

S. WEM 6.02 (1), (2), (12)

S. WEM 6.025

S. WEM 6.04 (1) to (4)

S. WEM 6.05 (4) and (5) (g)

SS. WEM 6.12 and 6.13

Health and Family Services

Ch. HFS 119

S. HFS 119.07 (6) (b) to (d)

S. HFS 119.15 (2) and (3)

Insurance

Ch. Ins 17

S. Ins 17.01 (3)

S. Ins 17.28 (6)

S. Ins 17.285 (14)

S. Ins 17.40

Natural Resources

Ch. NR 16 (Entire chapter)

Ch. NR 17 (Entire chapter)

Ch. NR 19

S. NR 19.05 (1)

S. NR 19.07

S. NR 19.11 (1) (intro.), (2) (e)

S. NR 19.26

S. NR 19.76 (1), (4e)

S. NR 19.79 (3), (5) (a)

S. NR 19.795 (3) (b)

S. NR 19.80 (4) (a)

S. NR 19.81 (1), (2) (a) and (b), (4), (5) (a)

SS. NR 19.90 to 19.95

Ch. NR 46

S. NR 46.15 (26m)

S. NR 46.16 (1) (c)

S. NR 46.18 (1)

S. NR 46.30 (2) (a) to (c)

Ch. NR 336 (Entire chapter)

Ch. NR 400

S. NR 400.02 (40), (70), (79) and (135)

Ch. NR 409

S. NR 409.02 (34)

Ch. NR 410

S. NR 410.04 (2) (b) and (4)

Ch. NR 415

S. NR 415.02 (9)

Ch. NR 419

S. NR 419.07 (3) (intro.) and (f)

Ch. NR 420

S. NR 420.02 (31) and (41)

S. NR 420.03 (1) (a)

Ch. NR 422

S. NR 422.02 (67m)

S. NR 422.04 (2) (intro.) and (a)

Ch. NR 423

S. NR 423.05 (1) (intro.), (2) and (3)

Ch. NR 424

S. NR 424.03 (1) (c)

Ch. NR 431

S. NR 431.05 (1)

Ch. NR 439

S. NR 439.055 (6)

S. NR 439.06 (1)

S. NR 439.07 (2) (intro.), (8) (a), (b) and (intro.), (c) to (k), (m) to (o), (9) (intro.)

S. NR 439.075 (4) (a)

S. NR 439.08 (1) and (2) (b) and (c)

S. NR 439.085 (2), (a) to (c), (3) (intro.) and (a)

S. NR 439.09 (intro.)

S. NR 439.095 (1) (intro.), (a), (g), (5) (a) (intro.) and (g)

S. 439.10

Ch. NR 447

S. NR 447.08 (1) (am)

S. NR 447.13 (a) (a)

Ch. NR 484

S. NR 484.03 (3) and (4)

S. NR 484.04 (22)
 S. NR 484.10 (1), (2), (4), (6) to (8), (12), (13), (21),
 (25), (25m), (27) to (34), (40), (42m), (44), (45),
 (49) to (51), (53), (54) and (55g)

Ch. NR 809

S. NR 809.04 (21), (34) (a)
 S. NR 809.22
 S. NR 809.26 (1) (e), (3) (L)
 S. NR 809.51 (2)
 S. NR 809.52 (2), (5)
 S. NR 809.543 (3) (c), (7) (d)
 S. NR 809.548 (3) (a)
 S. NR 809.55 (5) (c)
 S. NR 809.562 (3) (intro.) to (d)
 S. NR 809.563 (3)
 S. NR 809.565 (2) (a)
 S. NR 809.566 (4)

S. NR 809.567 (4) (b)
 S. NR 809.569 (1) (b), (d), (2) (b), (c), and (3) (a)
 S. NR 809.60 (2)
 S. NR 809.75 (4) (intro.)
 S. NR 809.76 (intro.) and (5)
 S. NR 809.833 (3) (c)

Public Instruction**Ch. PI 7**

SS. PI 7.02 to 7.06

Veterans Affairs**Ch. VA 13**

S. VA 13.05 (intro.) and (1)

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

Insurance**Ch. Ins 17**

S. Ins 17.25 (5) (c) and (n)

Natural Resources**Ch. NR 409**

S. NR 409.02 (57)
 S. NR 409.065 (1) (e)

Ch. NR 410

S. NR 410.03 (2) (g)

Ch. NR 422

s. NR 422.02 (13), (49m) and (112)

S. NR 422.142 (5) (a) and (d)

Ch. NR 809

S. NR 809.561 (5)

Ch. NR 415

S. NR 415.07 (1) (b) and (2) (a)
 S. NR 415.075 (3) (c)

Ch. NR 420

S. NR 420.02 (33) and (39m)
 S. NR 420.03 (3) (c)

Errata

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Natural Resources**Ch. NR 109**

S. NR 109.05

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 100.16 (1) (intro.)	126.47 (3) (b) or (c)	126.47 (3) (a) 2. or 3.
ATCP 100.20 (2) (a) and (f)	126.47 (3) (c)	126.47 (3) (a) 3.
ATCP 100.20 (2) (c)	126.47 (3) (b) or (c)	126.47 (3) (a) 2. or 3.
PI 34.01 (62)	118.30 (1) (a)	118.30 (1)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 24. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Spc. Paul J. Sturino of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 25. Relating to the creation of The Governor's Task Force on Energy Efficiency and Renewables.

Executive Order 26. Relating to the establishment of an employee assistance program.

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